

Docket 95-42

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

NOV 22 1989

IN REPLY REFER TO:

Heron, Burchette, Ruckert & Rothwell  
Suite 700  
1025 Thomas Jefferson Street, N.W.  
P.O. Box 96670  
Washington, D.C. 20090

DOCKET FILE COPY ORIGINAL

Attention: Grier C. Raclin

Dear Mr. Raclin:

As counsel for A.C. Nielsen Company ("Nielsen"), you have requested permission for Nielsen and participating television broadcasters to use line 22 of the active portion of the television video signal to transmit the Nielsen Automated Measurement of Lineup ("AMOL") system. The Commission placed your request on public notice and has received comments and reply comments concerning this matter. After reviewing these filings, we conclude that conditional approval of Nielsen's request is warranted. Accordingly, this letter grants Nielsen and its client television station licensees temporary approval to use line 22 to carry the AMOL signal for a period ending May 1, 1990.

The Commission's policy concerning the use of special signals (i.e., signals related to broadcast operation, but not intended for use by the public) was described in a Public Notice dated April 20, 1970. See 22 FCC 2d 779 (1970). There, the Commission recognized the benefits special signals can provide, and particularly their contribution to efficient broadcast operation. However, the Commission also expressed concern that such signals could cause some degradation of the broadcast signal. For this reason, the Commission invoked its powers under Section 303(e) of the Communications Act of 1934, as amended, to require that such signals not be transmitted without its specific authorization. The Commission stated that such permission will be granted only when a licensee is unable to transmit the signals by other means which have no detrimental effect on the broadcast service.

The Commission has subsequently permitted transmission of special signals by television stations under their broadcast authority. In BC Docket No. 78-308 (46 Fed. Reg. 40024, August 6, 1981), the Commission authorized television stations to transmit source identification ("SID") signals in the vertical blanking interval of the television video signal. (The vertical blanking interval or "VBI" is the period in which 21 horizontal scanning lines are transmitted which turn off the beam in the television receiver while it is

being repositioned from the bottom to the top of the screen prior to the next video field.) These signals identify the network, the city of origin and the date and time of a program's transmission. The networks use this information to verify transmission of programs by affiliated stations.

In 1985, the Commission authorized the use of systems developed by Telescan, Inc. and Ad Audit, Inc. for electronic verification of television broadcasts. These systems were designed to operate on line 22, the first line of the "active" television picture after the vertical blanking interval. These systems are similar in that they convey information about the date, time of day and length of commercial messages, as well as the presence of audio and video. Tests of these systems revealed that they caused no noticeable degradation to the television picture because the television receiver's overscanning normally renders line 22 invisible to the viewer. The Commission also noted that these systems required no changes to any component of a station's program presentation or transmitter equipment, and were compatible with the technical standards governing the television service. Public comment on these systems, principally from broadcasters, generally did not oppose their authorization provided that: (1) broadcasters were advised of the presence of the signals and (2) the ultimate control and authority with respect to the signal transmission remained with individual television station licensees. The Commission made these terms a condition of the subsequent grants.

Turning to this latest request, we have reviewed the information submitted by you and other parties supporting or opposing your request for approval of Nielsen's AMOL system. Based upon this review, we have reached the tentative conclusions we discuss below.

First, we believe Nielsen's AMOL system qualifies as a "special signal" and should be considered as an integral part of the associated program material. The information it conveys relates to the programming within which it is transmitted and is not intended for the use of the viewing public. Because the system can expedite determination of a station's rating, a matter of interest to virtually every broadcaster, it is an element of the business side of broadcasting and is therefore properly characterized as a part of broadcast operation. From an operational and utilitarian perspective, we conclude that AMOL is functionally comparable to previously authorized systems using line 22.

Airtrax, in comments opposing your request, questions Nielsen's statement that "...television licensees will retain ultimate control over their transmissions and are not required to transmit the AMOL signals outside of their contractual agreements with Nielsen and programmers" (emphasis supplied by Airtrax). Airtrax argues that broadcasters could be forced to carry AMOL signals on line 22. We note, however, Nielsen's past willingness to accommodate licensees not wishing to transmit SID signals on line 20 in the vertical blanking interval and its assurance that similar arrangements can be made with respect to licensees objecting to AMOL signals on line 22. Nonetheless, we take this opportunity to reiterate that individual television broadcasters must be free to make the ultimate decision as to whether AMOL or other broadcast-related systems should be carried on line 22. We require that broadcasters be advised of any program material that is AMOL encoded, and remain free to "strip" it from the video signal if desired. Our authorization here, as with our prior actions approving "special signal" uses of line 22, is conditioned accordingly.

We understand that Nielsen intends to shift its current line 20 AMOL system in use at some stations to line 22. The technical characteristics of this system appear consistent with the technical rules applicable to television broadcasting. This leads to our second conclusion, that the effects of the AMOL system on line 22 will be no worse than those of any previously authorized line 22 system. We also conclude that the AMOL system will not require changes in any component of a station's program presentation or transmitter equipment and that it will not visibly degrade the picture presented to viewers.

As technical justification for access to line 22, Nielsen submits that some video recording equipment does not reproduce information contained in the vertical blanking interval faithfully. Because modifications to recording equipment to correct this type of defect will be impossible in some cases and very burdensome or expensive in others, and because no other line within the vertical blanking interval is likely to be more reliable, we find Nielsen has justified the proposed use of line 22. Moreover, we find that many television licensees are likely to benefit from the improved accuracy of rating results made possible by the increased reliability the line 22 AMOL system offers, particularly when compared to the current line 20 system.

AirTrax contends, however, that Nielsen's proposed use of line 22 to track program material could be incompatible with AirTrax's previously authorized use of line 22 to track commercial material. Specifically,

AirTrax asserts that the AMOL signal will be laid down after the program and commercial material comprising a program package are assembled at the post-production stage. Because the technical characteristics of the recording equipment used to apply the AMOL signal preclude precise positioning, AirTrax contends that the signal will simply be placed over both the program material and the commercial material in a given program package. This, in turn, will overwrite the AirTrax commercial tracking codes that, prior to final assembly of the program package, had been applied separately to the commercial material. As a result, AirTrax argues, its codes will be rendered unusable and it will be unable to provide its commercial tracking service. In reply, Nielsen asserts that it will make every effort to assist AirTrax in ensuring that AirTrax codes are not deleted or replaced by the AMOL signal. We do not believe that this is sufficient.

As noted earlier, Nielsen's use of line 22 during program material to track that material on behalf of broadcast licensee clients is, in our view, a legitimate broadcast-related use of the active video line. Nielsen's incidental and unintended use of line 22 during commercial material, however, in which Nielsen has no asserted interest on behalf of broadcast licensee clients, would not qualify as a legitimate use of the active video line, particularly where it would preclude an authorized, broadcast-related use of that line by AirTrax or others. Accordingly, Nielsen must ensure that its AMOL encoding of line 22 is wholly confined to the program material which it legitimately seeks to track and does not adversely affect AirTrax's or others' authorized use of that line for other legitimate purposes. Licensees are reminded that program material utilizing AMOL codes on line 22 which they broadcast must comply with this requirement.

Given the significant disagreement in the pleadings as to the practicality of ensuring the integrity of line 22 signals outside of program material, we will grant Nielsen's request for only a limited, initial period, during which the compatibility of Nielsen's use can be evaluated. Should experience during this period confirm the feasibility of Nielsen's use, permanent authority may then be granted. In this longer term context, it is worth noting that the increasing use of tracking and other codes on video lines underscores the importance of precise, controllable and compatible encoding systems.

All these factors lead us to conclude that temporary approval for use of Nielsen's AMOL system would be in the public interest. Accordingly,

pursuant to Section 303(e) of the Communication Act of 1934, as amended, temporary approval IS GRANTED for general use of Nielsen's AMOL system on line 22 by licensees in the television services, subject to the condition that the AMOL signal be integrated only with program material being monitored by Nielsen. The AMOL signal shall not be embedded in commercials or other broadcast materials which are not being monitored by Nielsen. This authority expires on May 1, 1990, and is limited to the use of the AMOL system as described herein. No modifications in the system may be made without the express consent of the Commission. Moreover, this temporary authorization may be withdrawn summarily at the Commission's discretion if the Commission has reason to believe that other systems are being adversely affected. Section 0.283 of the Commission's Rules provides authority for this delegated action.

Sincerely,

  
Roy J. Stewart  
Chief, Mass Media Bureau